



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 15, 2003

Ms. Paula A. Jones
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2003-6450

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187583.

The Employees Retirement System of Texas ("ERS") received a request for "[t]he names of all former Texas state legislators participating in the group benefits program." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1551.063 of the Insurance Code, section 815.503 of the Government Code and the common law right to privacy. We have considered the exception you claim and reviewed a representative sample of the information at issue.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The 78th Legislature amended Section 1551.063 of the Insurance Code to provide:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) The records of a participant in the group benefit program in the custody of the board of trustees, or of an administrator or carrier acting on behalf of the board, are confidential and not subject to disclosure, and the board is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552, Government Code, except as provided by this section.

(b) The records may be released to a participant or to an authorized attorney, family member, or representative acting on behalf of the participant.

(c) The board of trustees may release the records to:

(1) an administrator, carrier, agent, or attorney acting on behalf of the board;

(2) another governmental entity;

(3) a medical provider of the participant to accomplish the purposes of this chapter; or

(4) a party in response to a subpoena issued under applicable law.

(d) The records of a participant remain confidential after release to a person as authorized by this section.

(e) The records of a participant may become part of the public record of an administrative or judicial proceeding related to a contested case under this chapter unless the records are closed to public access by a protective order issued under applicable law.

Act of June 2, 2003, 78th Leg., R.S., ch. 1111, 2003 Tex. Sess. Law Serv. 3184 (Vernon) (to be codified as an amendment to Ins. Code § 1551.063(a)). Section 1551.108 of the Insurance Code provides for the continuing eligibility for participation in the group benefits program of certain persons with legislative service or employment. You indicate that a former state legislator who participates in the group benefits program pursuant to section 1551.108 completes and submits enrollment forms to ERS. ERS maintains information derived from the enrollment forms in electronic records. You explain that information responsive to the instant request is maintained only in electronic records consisting of information derived from participants' completed enrollment forms. Based on your representations and our review of the submitted information, we agree that the requested information is confidential

under section 1551.063(a). Furthermore, the release provisions in subsections (b) and (c) of section 1551.063 do not apply here. Therefore, ERS must withhold the requested information from disclosure under section 552.101 of the Government Code as information deemed confidential by section 1551.063 of the Insurance Code.²

Finally, we note that section 1551.063(a) now provides that the board of trustees of ERS is not required to seek an opinion from the attorney general with regard to a request for a record of a participant in a group benefit program or information about a record. Therefore, ERS need not ask for a decision from this office again regarding enrollment information for individuals participating in the group benefits program pursuant to section 1551.108 of the Insurance Code.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

²Because we are able to resolve this matter under section 552.101 and section 1551.063, we need not address your additional arguments against disclosure.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 187583

Enc: Submitted documents

c: Mr. David Mann
Texas Observer
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(w/o enclosures)